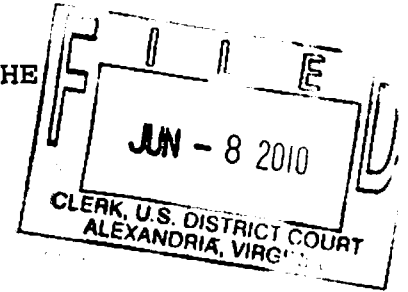


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



UNITED STATES OF AMERICA, FOR THE)
USE OF PRECISION MECHANICAL)
SERVICES, LTD.,)
)
Plaintiff,)
)
v.)
)
DOD CONTRACTING SERVICES, INC.,)
et al,)

1:09cv1211 (LMB/TCB)

Defendants.

ORDER

Cross-claim plaintiff Biscayne Contractors, Inc.

("Biscayne") has filed a Request for Clerk's Entry of Default [24] as to cross-claim defendant DOD Contracting Services, Inc. ("DOD"). Attached thereto is the declaration of Biscayne's attorney, which indicates that the Answer and Cross-claim was served upon DOD through a private process server. Nothing in that declaration or in the record reflects that Biscayne ever either obtained a summons or served a summons on DOD.

DOD never entered an appearance in this action, and is in default although no motion was ever made by the original plaintiff for an entry of default against DOD. Because DOD never entered this civil action, to accomplish proper service of the cross-claim, Biscayne had to serve a summons on DOD pursuant to Fed.R.Civ.P. 5(a)(2).¹ See also Fluor Engineers and Constructors,

¹ That rule requires that any pleading that asserts a new claim against a defendant that has failed to appear be served on

Inc. v. Southern Pacific Transportation Co., 753 F.2d 444, 449 (5th Cir. 1985) (holding that until the cross-claim defendant "actually appeared in the lawsuit, the [cross-claim plaintiff] should have served its cross-action along with a summons pursuant to Fed.R.Civ.P. 4" and that service was made proper only once the cross-action was served with a summons). Accordingly, the Request for Clerk's Entry of Default [24] is DENIED, and it is hereby


ORDERED that cross-claimant Biscayne immediately correct service and file with the Court proof of execution of the summons. Biscayne may, at the appropriate time thereafter, refile its request for entry of default if defendant DOD is still in default. In addition, because the defendant DOD has never made an appearance in this action, it is hereby

ORDERED that the bench trial scheduled for Tuesday, June 15, 2010 be and is CANCELLED.

The Clerk is directed to cancel the bench trial scheduled for Tuesday, June 15, 2010 and to forward copies of this Order to counsel of record and to defendant DOD at its address in the file.

Entered this 8th day of June, 2010.

Alexandria, Virginia



Leonie M. Brinkema
United States District Judge

that party under Fed.R.Civ.P. 4.